

Defendant.

OPINION AND ORDER
[Resolving Docs. 18 & 19.]

Case No. 1:06-CV-2713
Gwin, J.

Plaintiffs' Response to the Motion to Dismiss. [Doc. 8.]

The Sixth Circuit in *Grover v. Eli Lilly and Co.*, 33 F.3d 716, 718 (1994) held that a district court abuses its discretion "where the defendant would suffer 'plain legal prejudice' as a result of a dismissal without prejudice...." Likewise, the Court must consider "the defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant." *Id.*

In the instant case, Defendant has expended significant effort and expense to resolve this litigation. Although Defendant has not filed a Motion for Summary Judgment, Defendant has filed a Motion to Dismiss Plaintiffs' Second Amended Complaint, as well as a Reply to Plaintiffs' Response to the Motion to Dismiss. Likewise, Plaintiffs have provided no explanation for their need to take a dismissal. Therefore, the Court finds that Defendant would suffer "plain legal prejudice" as a result of a dismissal without prejudice in these circumstances.

As such, the Court **DENIES** Plaintiffs' Motion for Voluntary Dismissal Without Prejudice. Plaintiffs are ordered to notify the Court whether they wish to proceed with this case within ten days of the filing of this order. If Plaintiffs do not wish to pursue this case, the case will be dismissed with prejudice.

IT IS SO ORDERED.

Dated: March 2, 2007

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE